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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0030-24
	)	OEA Matter No. 1601-0031-24
	)	
v.	)	Date of Issuance: September 25, 2025
	)	
DISTRICT OF COLUMBIA	)	
FIRE & EMERGENCY MEDICAL	)	
SERVICES DEPARTMENT,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	
Employee, <i>Pro-Se</i>		
Madeline Terlap, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 16, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department (“FEMS” or the “Agency”) action of removing him from service resulting from a FEMS Trial Board determination that removal was warranted in FEMS Case No. U-22-859.¹ On February 20, 2024, Employee filed another Petition for Appeal with the OEA contesting FEMS additional adverse action of termination as noted in FEMS Case No. U-22-860.² On October 3, 2023, Employee appeared before a Fire Trial Board where these cases were consolidated and he received adverse rulings that ultimately resulted in his removal from service.

These matters were assigned to the Undersigned on March 22 and 25, 2024. A Prehearing/Status conference was held in the above captioned matters on June 5, 2024. During this conference, the parties presented their version of the salient facts and circumstances surrounding this matter. After taking into account the parties’ record, I positions as stated during

¹ OEA Matter No. 1601-0030-24.

² OEA Matter No. 1601-0031-24.

the conference and in the documents of record, I note that this Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002).³ On June 6, 2024, the Undersigned issued an Order that dictated the briefing deadlines for these matters. The parties complied with the aforesaid briefing schedule. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 id. States:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUES

Whether the Trial Board's decision was supported by substantial evidence, whether there was harmful procedural error, or whether Agency's action was done in accordance with applicable laws or regulations.

Statement of the Charges⁴

Charge 1 Violation of D.C. Fire and Emergency Medical Services Department Order Book, Article VI, § 6, Conduct Unbecoming an Employee, which states:

Conduct unbecoming an employee includes conduct detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or any conduct that violates public

³ 801 A.2d 86 (D.C. 2002). This case will be discussed in further detail below.

⁴ See Letter regarding Final Agency Decision: Termination Case No. U-22-859 (Hearing Date March 14, 2023). Of note, the charges and attendant specifications are particularly voluminous but have been included in their entirety in order to note the vigor, breadth and context of the adverse actions that are the subject of the instant Initial Decision.

trust or law of the United States, any law, municipal ordinance, or regulation of the District of Columbia committed while on-duty or off-duty.

Further violation of D.C. Official Code § 22–404 (Assault or Threatened Assault in a Menacing Manner; Stalking), which states:

(a)(1) Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 180 days, or both.

Further violation of D.C. Fire and Emergency Medical Services Department Bulletin No. 33, Social Media Policy, § II, which states:

A. KNOW AND FOLLOW THE RULES

* * *

Inappropriate electronic communication that may include discriminatory remarks, harassment, retaliation, sexual innuendo, threats of violence, or similarly inappropriate or unlawful content will not be tolerated and may result in disciplinary action up to and including termination.

B. BE RESPECTFUL

Always be fair and courteous to fellow employees, residents and visitors of the District vendors, or people who work on behalf of the District. Also, keep in mind that you are more likely to resolve work-related complaints by speaking directly with your co-workers or your immediate supervisor, rather than by posting complaints to a social media outlet. Nevertheless, if you decide to post complaints or criticism, avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene, threatening or intimidating, or as disparaging to customers, members, employees, or suppliers, or that might constitute harassment or bullying, even if it is done after work hours, on a personal electronic device, or from home.”

Further violation of D.C. Fire & Emergency Medical Services Department Order Book Article VI, § 8 (Insubordination), which states:

Insubordination is a failure and/or refusal to comply with lawful orders or instructions, either verbal or written, from a higher ranking member.

Further violation of D.C. Fire and Emergency Medical Services Department Order Book Article VI, § 7 (Inefficiency), which states:

Inefficiency is evidenced by repeated and well-founded complaints from superior officers or others concerning improper performance of duty or neglect in the performance of duties. Three (3) adverse actions within a period of twelve (12) months involving any charge of misconduct, conduct unbecoming an employee, improper performance of duty or neglect in the performance of duties shall be prima facie evidence of inefficiency. If a member is cited a fourth time for a similar charge in a twelve month period, the member will also be cited for inefficiency. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(f) (4), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty." See also 16 DPM § 1603.3(f)(3).

This misconduct is further defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(e), to include: "Any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law." See also 16 DPM § 1603.3(e).

This misconduct is further defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(f)(4), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Insubordination." See also 16 DPM § 1603.3(f)(4) (August 27, 2012).

Specification 1: In her Special Report (dated 10/05/2022), Deputy Fire Chief Kishia Clemencia describes FF/EMT [Employee]'s misconduct as follows:

On the 29th day of August 2022, I received an inappropriate email from FF/EMT [Employee] pertaining to the Trial Board decision to demote him in Case No. U-22-004. Then, on 19th day of September 2022, I was provided documentation from the Office of Internal Affairs showing that FF/EMT [Employee] had engaged in additional inappropriate behavior during the month of August 2022 after receiving the Final Agency Decision memorializing the Trial Board's decision to demote him to Firefighter/Emergency Medical Technician.

* * *

The following violations are:

I. On the 17th day of August 2022, FF/Tech [Employee] posted the following message on the Department's Recruiting website: Are you

someone that's been caught soliciting minors online? Well apply now because DCFEMS is a safe haven for child predators like this one...isn't that right". In addition, FF/Tech [Employee] posted a picture of FF/EMT William Meckley referring to him as the child predator. He also posted a message referencing BFC Douglas Pagel. "The guy on the left is a really stand up fair and impartial guy...just kidding... he's not even close to being one...what a joke.

II. On the 25th day of August 2022, FF/Tech [Employee] posted the following on social media:

I hope you and the others on the rigged trial board panel feel good about upholding Baker's recommendation by demoting me. The decision you all made was appalling and absolutely 100% disgusting and because of it you've now affected my livelihood. I can guarantee you all one thing ... when it all comes together, I'm going to expose everyone who looked the other way and protected this POS as well as those who failed to do the right thing. I can assure you that you and your panel of Baker yes men didn't do the right thing, but don't you worry...one day you'll be sitting in a courtroom having to explain how you came to your decision and how [Employee] humiliated a coworker who was trying to solicit and meet a minor for sex. In the meantime . . . do yourself a favor and watch the video below if you already haven't already. After watching it ask yourself the following:

1. How in the world did [Employee] humiliate embarrass shame this child predator when 14K people saw the video of him getting exposed for soliciting and meeting a minor for sex.
2. Please explain how these were allegations.
3. Please how [Employee]'s question to Dr. Holman ashamed humiliated and embarrassed someone who solicited not only one minor online but was talking to others who were 15 years old?

After you're done answering those questions ask yourself if he felt ashamed humiliated and embarrassed when he posed as a teen female after setting up a profile in various teen chat rooms?

III. On the 26th day of August 2022, FF/Tech [Employee] posted the following on social media:

You're the one that has to look in the mirror each morning not me ... until then keep doing whatever you're told to do or afraid to do because there's no way on god's green earth if I was sitting in a courtroom, I'd been found guilty of anything. But don't worry Ryan...one of these days you'll be sitting in my Attorney's office during a deposition, and you'll be able to tell

him why on the record how and why you came to the decision that you did ... have a good day ... I know I will.

On top of this puny raise, they should include we'll protect your rights in the workplace and remove the corrupt trial board process where those on the panel do what daddy Craig recommends because they don't have any kahonnies to do the right thing. I believe a few of your coward Facebook friends would know about that. Btw...one of their names isn't Pyan Ragel Or Mhristopher Coore or Piachael Moles or Hristopheer Colmes I'd say Ryan Pagel's name, but he specifically told me in a Facebook message to NEVER EVER use his good name in anyway shape or form ... you know ... like those public posts where your name and picture are associated with and are out there for the entire "public" to see ... guess he's a little sensitive about protecting child predators like this one..." (Posted picture of FF/EMT William Meckley below this post)

IV. On the 28th day of August 2022, FF/EMT [Employee] sent the following message to both Lt. Michael Carmen and Sgt. Brian Perry on their dc.gov e-mail accounts:

Here's your allegations...next time you want to protect a child predator know the facts. Because of your pathetic lying under oath during my trial board you've now affected my livelihood. You protected someone who posed as a teen female to create a profile in various teen chat rooms for one purpose and one purpose only and that was to solicit a minor for sex. However, on September 7, 2021, both of you chose to console and protect a child predator because he felt ashamed and embarrassed because of my comments to Dr. Holman...

1. Do you think the child predator felt ashamed and embarrassed when he decided he'd try to meet not only 1 but 3 other minors for sex?

2. Do you think the child predator was ashamed and embarrassed when he drove by the decoys' house 3 times that day?

3. Do you think the child predator was ashamed and embarrassed after getting caught and exposed on social media where 14K people saw him caught red handed thinking he was going to meet a minor? I can guarantee both of you as well as everyone else who protected the child predator that you'll be held accountable. One of these days you'll find yourselves sitting in a deposition while being deposed by my Attorneys so you'll get a second chance to while under oath to them about these so-called allegations ... btw ... you might want to save up some money because lawyers aren't cheap ... As much as I find both of you repulsive and sorry excuses for a human being I'll let karma takes its course ... and I can assure you its coming for both of you... For now, go get some popcorn and enjoy the video ... since its

apparent you adore this scumbag so much maybe both of you can hold hands and watch it together.

V. On the 29th day of August 2022, FF/EMT [Employee] e-mailed the following message to all persons connected to his May 25, 2022 Trial Board hearing for Case No. U-22-004 — this included the use of dc.gov, personal, and business e-mail accounts of the Trial Board Panel members, the Court Reporter, IAFF Local 36, attorneys, witnesses, and FEMS employees within the Office of Internal Affairs, the Office of Information Technology, the Office of Compliance and the Office of the General Counsel:

Attached is my Trial Board decision, the video evidence that wasn't allowed and a picture of a child predator aka Bust#28, because after all, these were just allegations, right? The decision to demote me and affect my livelihood were not only appalling, but reprehensible. I can assure everyone from the trial board panel to everyone who protected this child predator, you will be held accountable. Whether you were told to uphold Baker's absurd recommendation or were merely afraid to do the right thing, you will be held accountable. Specifically, on the 17th, 25th, 26th, 28th, and 29th days of August 2022, FF/EMT [Employee] failed to behave in a manner that complies with the policies, procedures, rules, and regulations set forth by the Department — such compliance is required of each Department member. Furthermore, FF/EMT [Employee] has refused to comply with the Department's order to refrain from committing the same misconduct for which he was previously demoted in Case No. U-22-004; instead, FF/EMT [Employee]'s misconduct has intensified with: (1) additional attacks on FF/EMT Meckley through repeatedly displaying his picture on social media; (2) posting derogatory messages on the Department's Recruiting website; and (3) threatening multiple government and non-government personnel, which included high ranking government officials, by e-mail. FF/EMT [Employee]'s continuing misconduct indicates that he has chosen not to exhibit the CORE values of the Department. FF/EMT [Employee]'s multiple "accountability" threats as well as his electronic mail and social media-based attacks on government personnel violates law and, otherwise, constitutes neglect of duty, insubordination and inefficiency — particularly considering that this is his fifth disciplinary infraction in Fiscal Years 2019, 2020, 2021 and 2022; further, three (3) such cases involve his unbecoming conduct:

Case No. Infraction

1 U-19-039 Motor Vehicle Accident

2 U-19-260 Altercation with Lieutenant (Conduct Unbecoming)

3 U-20-105 Arrest: Driving Under the Influence (Conduct Unbecoming)

4 U-22-004 Social Media & Hazing Policy Violations (Conduct Unbecoming)

SUMMARY OF MATERIAL TESTIMONY

Tuesday March 14, 2023 (OEA MATTER NO. 1601-0030-24)

Agency's Case-in-Chief

Kishia Clemencia ("Clemencia") Tr. 35-77

Clemencia served as the Deputy Fire Chief of the Professional Standards Office for the District of Columbia Fire and Emergency Medical Services ("Agency") for thirty-one years. She indicated that her position involved overseeing the division that acts as the primary source for distributing information regarding general orders, special orders, and memorandums to all Agency members. Clemencia noted that she is acquainted with Employee due to a previous case where she was the organizer of the Trial Board concerning this individual. Clemencia testified that following the delivery of the final Agency decision to Employee, he dispatched messages to her as well as to all those involved in the Trial Board, in which he mentioned that everyone participating in the Trial Board would be responsible for their actions—she interpreted this email as a threat, especially given her close collaboration with compliance, which she deemed serious. Clemencia learned about the email sent by Employee when Chief Christopher Holmes ("Holmes") informed her, and he also mentioned that Employee had been sending further messages through social media that she was previously unaware of. She then indicated that she sent an email to the executive staff notifying them of Employee's email, and they then took charge of the situation.⁵

Additionally, she stated that when the executive staff returned the case to her, they provided further information about Employee, including printed social media posts and other messages sent to fellow Agency employees, which led her to feel a strong obligation to respond to the situation and subsequently cite Employee. Clemencia elaborated that the process for citing Employee involved her completing an electronic intake form to report various infractions she identified in his conduct, which she then submitted to the Compliance office. She stated that she issued a citation to Employee for conduct unbecoming of an employee, harassment, and violations of the social media policy. Furthermore, Clemencia clarified that Employee's actions directly breached Article 6. General Rules of Conduct, conduct unbecoming an employee, because his behavior negatively impacted the discipline intended to harm another member or members of the Agency.⁶

Clemencia indicated that Employee made negative comments about individuals with the intent to discredit them. Clemencia asserted that Employee breached the social media policy by sharing a photo of an employee presently working at Agency, along with statements, images, videos, and audio that could be interpreted as harmful and obscene, as he referred to him as a child predator, which she claims is threatening, intimidating, or disparaging to customers, members, employees, or suppliers, constituting a violation.⁷

⁵ Tr. 35-46.

⁶ Tr. 47-53.

⁷ Tr. 54-57.

During cross-examination, Clemencia stated that the Internal Affairs unit was the first to investigate Employee's communications, which is also where she got the information about his social media exchanges. She affirmed that Internal Affairs did not provide her with a written report on their investigation relating to Employee, and she is unaware if they ever interviewed him. Clemencia acknowledged that Agency charged Employee with inefficiency in this case; however, she mentioned that she did not cite him for inefficiency in her special report because she was only citing him based on his actions concerning the incident. She also indicated that once a citation is issued, it is up to the Assistant Fire Chief to decide whether to add or subtract any citations that have been made.⁸ During the redirect examination, Clemencia mentioned that she did not issue a citation to Employee for violating communication rules or any policies.⁹

Christopher Holmes ("Holmes") Tr. 81-103

Holmes worked as the third Battalion Fire Chief on number four platoon for Agency for twenty-two years. He mentioned that he is sometimes assigned to participate in Fire Trial Boards. Holmes noted that he is acquainted with Employee, as he recently served on a Fire Trial Board involving him. He stated that he was one of the panel members and the chairperson during the Fire Trial Board concerning Employee. According to Holmes, Employee's earlier Fire Trial Board resulted in a guilty verdict, leading Agency to demote Employee to the rank of firefighter. He confirmed that the Fire Trial Board makes its determination, and once the decision is made, it is sent to the Fire Chief and the Assistant Fire Chief for their review and approval.¹⁰

Holmes stated that after the Fire Trial Board convened for Employee, he received multiple texts and phone calls, as he remembers, from some members under his command in the Engine 32 division, informing him about certain messages posted online by Employee concerning the Fire Trial Board and several members of both the board and the attorneys involved. He mentioned that he received a copy of the messages sent by Employee and forwarded it to Clemencia, while also copying Captain Melonie Barnes ("Barnes") on August 30, 2022, to make them aware. Holmes indicated that the tone of the messages he reviewed sent by Employee was perceived as threatening, and those who brought the messages to his attention felt similarly. He confirmed that Employee also made public posts on Facebook that he found to be threatening, noting that Employee identified him and a few other Board members in the post, although he attempted to obscure their names by misspelling the first letters of their first and last names.¹¹

During cross-examination, Holmes mentioned that he forwarded the messages sent by Employee to his superiors to determine if Employee's behavior warranted notifying the Police Department. He mentioned that his superiors had informed him that Employee's communications were being investigated and that they were looking into his behavior.¹²

⁸ Tr. 60-70.

⁹ Tr. 77.

¹⁰ Tr. 81-83.

¹¹ Tr. 84-95.

¹² Tr. 100.

Christopher Moore (“Moore”) Tr. 105-124

Moore worked as a Captain on number four platoon Engine Company 15 for Agency. Moore acknowledged that he sometimes serves as a member of the four-person Fire Trial Boards and that he is acquainted with Employee, as he was part of the Fire Trial Board panel for Employee held on May 25, 2022. During the Fire Trial Board that involved Employee, Moore stated that he was part of the decision by Agency to demote Employee, which he indicated he approved. Moore testified that following the Board's decision to demote Employee, he received a notification via Facebook Messenger from Employee, as well as an email that he deemed inappropriate and somewhat threatening. Moore confirmed that Battalion Fire Chief Douglas Page (“Paige”) also received similar messages from Employee, leading him to forward Employee's Facebook post and messages to Chief John A. Donnelly (“Donnelly”)¹³.

During cross-examination, Moore acknowledged that the communications he got from Employee were not intended for him. He also stated that he did not report the messages he received from Employee right away, and instead, he reported them about five days later after receiving an email from Donnelly informing the division about the messages.¹⁴

Brian Perry (“Perry”) Tr. 126-144

Perry served as a Lieutenant for Engine Company 7 on the fourth platoon for twelve years at Agency. He testified as a witness for the Fire Trial Board that occurred on May 25, 2022, where Employee was the focus of the investigation. Perry noted that after the Fire Trial Board concluded, he did not hear any further communication from any members of the board, but he did receive several emails from Employee on Sunday, August 28, 2022, at 7:00 p.m., which he reported to his chain of command in a special report. Perry indicated that he informed Battalion Fire Chief Michael Spellman (“Spellman”) of the situation before submitting the special report because he deemed the emails from Employee to be inappropriate and unprofessional, and his chain of command instructed him to document all the details in a special report to send to them. Additionally, Perry mentioned that one of the emails from Employee, in which he states, “He can guarantee that we will be held accountable,” made him feel uneasy, prompting him to alert his chain of command.¹⁵

Perry mentioned that after he forwarded the special report to his superiors, he received another email on Monday, August 29, 2022, from Employee, which was a group message addressed to him and several others, containing the same characteristics as the initial email, leading him to feel even more anxious. Perry noted that he informed his superiors about the second email he received from Employee, and he also shared the email with Donnelly.¹⁶ During cross examination, Perry acknowledged that he did not inform the police about the email he received from Employee and that the email was only forwarded to his superiors. Additionally, he did not

¹³ Tr. 106-120.

¹⁴ Tr. 121.

¹⁵ Tr. 126-132.

¹⁶ Tr. 133-136.

pursue any criminal charges against Employee for sending the emails.¹⁷ During redirect, Perry indicated that he chose not to note in the special report that he felt anxious upon receiving the email from Employee, as he did not consider it relevant for inclusion in the report.¹⁸

Douglas Pagel ("Pagel") Tr. 145-186

Pagel served as a Battalion Fire Chief for nineteen years at Agency. Pagel mentioned that he sometimes has the responsibility of serving on the Fire Trial Boards and that he recognizes Employee since he was part of his Trial Board in May of 2022. Pagel confirmed that he endorsed the recommendations and conclusions of the Trial Board concerning Employee and that he was not involved beyond his approval after the decision was finalized. He acknowledged that the decision moved through the chain of command, and in late August 2022, he received a private Facebook message from Employee expressing his dissatisfaction with the Trial Board's outcome and alleging misconduct involving a member of Agency. Furthermore, Pagel indicated that in the Facebook message from Employee, there were threats of pursuing civil action against him and other Agency members. Pagel expressed that the messages he received from Employee were inappropriate and seemed to be an attempt to intimidate him. Additionally, Pagel was worried that the messages sent by Employee might escalate into something more serious than just the correspondence itself.¹⁹

Pagel confirmed that he replied to Employee concerning the messages he received and expressed his regret over Employee's feelings regarding the decision made. He instructed Employee not to communicate with him via any social media platforms about this matter. Pagel noted that when he first got the Facebook message from Employee, he contacted a member of the Trial Board to inform them of the message he received, which the member also acknowledged having received similar messages from Employee. After Pagel told Employee to refrain from contacting him on social media, Employee replied, reiterating his intention to pursue civil litigation against him and other Board members. Pagel indicated that he intended to inform his direct supervisor about the messages he had received from Employee to get their perspective on the issue, but they were out of the office, or he stated he was unavailable at that time. Additionally, Pagel mentioned that he received another email from Employee that included a larger group of recipients, which initiated an internal investigation into some of Employee's actions.²⁰

Pagel mentioned that before he received the email correspondence from Employee, Employee had made a comment on a post he shared on his Facebook page featuring himself and several other members of Agency at a recruiting event. Pagel explained that he created a post on his Facebook page to inform the public that Agency was recruiting at the Patuxent Naval Air Station for a job fair. Pagel characterized Employee's comment on his post as, "You can apply for the Fire Department because we're a safe haven for child predators or molesters." Pagel confirmed that Employee commented on his Facebook post after he had asked Employee to cease contact with him. Furthermore, Pagel stated that Employee also commented on a picture he appeared in

¹⁷ Tr. 139-142.

¹⁸ Tr. 143.

¹⁹ Tr. 145-156.

²⁰ Tr. 157-163.

on Agency's Facebook recruiting page, stating, "The guy on the left is a really stand-up, fair and impartial guy, just kidding, he's not even close to being one what a joke." Pagel indicated that Employee's remark about him on Facebook was intended to harm his reputation, as he was serving as a recruiting officer for Agency at that time, and to undermine or lessen the public's trust in Agency. Pagel confirmed that Employee's comments and posts on Facebook had been forwarded to the Office of Internal Affairs.²¹

Pagel stated that Employee kept making comments about him on Facebook with the intent to damage his reputation, and he noted that Employee also left remarks on his colleague's Facebook page, as informed by that colleague. Pagel indicated that in September 2022, Employee created a Facebook post that included personal details about his divorce from his ex-wife, which Pagel claims Employee must have searched public records to acquire, troubling him as it suggested Employee could access information about him and his residence. Pagel asserted that he promptly reported the posts to Internal Affairs.²²

During cross-examination, Pagel acknowledged that he did not inform Donnelly about the Facebook message he received from Employee until five days after receiving it. Pagel also stated that he did not pursue a protective order from law enforcement or the courts after obtaining the messages from Employee.²³ During the redirect examination, Pagel mentioned that he had informed his family about the posts that Employee shared and the Facebook messages he received from Employee for situational awareness, as he was uncertain about Employee's intentions and did not want to underestimate the situation.²⁴

Employee's Case-in-Chief

Employee Transcript Tr. 187-225

Employee started their position as a Firefighter/EMT with Engine Company 12 on the fourth platoon at Agency, with twenty years of experience. Employee recognized Exhibit number five as Agency's final ruling of his demotion following the Trial Board hearing he underwent. Employee explained that he challenged the decision since no witness provided evidence indicating he breached the social media policy or engaged in hazing against Firefighter JM ("JM").²⁵ Employee affirmed that he transmitted communications to other Agency members a week after the Trial Board's decision to demote him, as shown in Agency's exhibits; however, he highlighted that he did not threaten any physical harm to Agency members in those communications. Employee also stated that from August 25-30, 2022, he did not receive any orders or directions to cease communicating regarding the Trial Board's decision and has not discussed the case further with any panel members involved.²⁶

²¹ Tr. 164-170.

²² Tr. 170-179.

²³ Tr. 180-184.

²⁴ Tr. 185.

²⁵ Due to privacy concerns, this person's name is being withheld.

²⁶ Tr. 187-199.

Employee reported that he received only a single disciplinary action for a statement he mentioned in the year of 2021 from a Trial Board Hearing held on September 7, 2021. This action was related to a statement Employee made in the chat during the hearing regarding the Department of Health ("DOH") revoking the EMT certifications of Agency members who declined the Covid vaccination for medical reasons or other personal circumstances.²⁷

During cross-examination, Employee acknowledged that he made a comment in the chat during the virtual DOH Trial Board Hearing on September 7, 2021, which involved members from Agency and the DOH. He remarked, "Why does the DOH and Agency not revoke an EMT card after a member is caught attempting to meet an underage child for sexual purposes, yet they will take it away for not being vaccinated?" Employee confirmed that he posed a question during the DOH hearing to Dr. Holman, asking, "Dr. Holman, do you believe a member who is employed and has been caught trying to meet an underage child for sex should retain an EMT card?" Employee asserted that the statements and inquiries he made during the DOH hearing are factual and entitled to protection under the First Amendment. Employee verified that he did send an email to the members of the Trial Board, corroborating the statements he made after the meeting held in May 2022, following the decision to demote him. Furthermore, Employee mentioned that his remarks directed at the Trial Board members, which indicated they would be held accountable, were not meant as a threat but rather to notify them of his intention to pursue civil litigation.²⁸

Employee mentioned that he ignored Pagel's request to cease their communication regarding the May 2022 decision from the Trail Board hearing, asserting that Pagel's requests did not constitute a legal order; he stated that had Pagel established a protective order, he would have halted all communication with him. Employee maintains that he stands by the comments he made about the Trail Board members, which were made in a moment of anger over their decision to demote him.²⁹

During the redirect examination, Employee verified that the attorney from the Office of the Attorney General, whom he intimidated in an email sent on August 29, 2022, was among those who received the email that also included other Agency members.³⁰

Tuesday October 3, 2023 (OEA MATTER NO. 1601-0031-24)

Agency's Case-in-Chief

Rickey Eugene Miner ("Miner") Tr. 37-66

Miner served as an usher in the Terra Club section of the stadium for the Washington Nationals baseball team at Nationals Park for thirteen years. He described that the seating layout at Nationals Park consists of four sections. Miner explained that his responsibilities as an usher involve checking tickets as fans enter the area, ensuring that each individual has a valid ticket for

²⁷ Tr. 199.

²⁸ Tr. 206-213.

²⁹ Tr. 217-223.

³⁰ Tr. 225.

their designated section, and guiding fans to the specific section, row, and seat indicated on their tickets. He mentioned that the training he received as an usher included verifying game tickets, first aid, customer service, knowledge of the different areas within the park, and the ability to address patrons who may be causing disturbances that could negatively impact the experience of other guests. Miner confirmed that he frequently participates in training sessions at the start of each season.³¹

Miner testified that on September 27, 2022, he was serving as an usher in the Terra Club section at Nationals Park when he observed the audience in sections 117 or 118 chanting, "throw him out." Miner indicated that he saw Employee on the stairs accompanied by two of his colleagues³² who were positioned in front of him while Employee filmed them with his phone and gestured toward the crowd. Miner noted that while he was on the stairs looking for someone to help with the situation, there was a lack of cooperation between Employee and his colleagues at that moment, and he witnessed his co-worker Kenyon instructing Employee to leave, which he did not follow. At that point, Miner reported that he approached the section to help his colleagues in deescalating the situation by telling Employee that he needed to go up the stairs and exit the stadium; however, Employee responded, "Don't put your hands on me, don't touch me." ³³

Miner recognized the District of Columbia Fire and Emergency Medical Services ("Agency") video named "Man Punches Usher in D.C. Nationals Park," which displayed footage of Employee dancing and filming on his phone before identifying himself as he moved to the section where Employee was causing a disturbance and directed him to leave. Miner stated that when he instructed Employee to exit, Employee reiterated his previous statement, saying, "Don't touch me, don't put your hands on me," as he attempted to engage with a fan on his right. Miner then used his hand in an effort to prevent Employee from approaching the fan, but he still moved closer and stepped into the fan's personal space, blowing a kiss at him.³⁴

Miner recounted that while he was helping Employee up the stairs out of the stadium area, Employee repeatedly told him, "Don't touch me, don't put your hands on me, calm down." After reviewing Agency's camera footage, Miner verified that during the escort, Employee swung his forearm and hit him while losing balance and falling back toward him. Miner further clarified that at that moment, he grabbed Employee to control him and to prevent him from delivering another punch while trying to stop Employee from toppling down the stairs onto him. Miner stated that he was able to keep Employee restrained until the Metropolitan Police Department ("MPD") and a few others arrived at the scene. Miner mentioned that during the effort to prevent Employee from falling back onto him, Employee bit his hand or finger.³⁵

Miner indicated that he was not disciplined or reprimanded for his decision to retain Employee at the moment of the incident; rather, he was praised for how he managed the situation, which his Employer viewed as being handled professionally given the circumstances that took

³¹ Tr. 37-41.

³² Due to privacy concerns, these persons names are being withheld.

³³ Tr. 42-48.

³⁴ Tr. 50-53.

³⁵ Tr. 53-57.

place. Miner recognized Agency exhibit bates number 223 as a picture of his right hand, showing injuries to the middle and fourth fingers caused by Employee biting them. Miner confirmed that he received first aid treatment at the stadium following the incident and subsequently consulted his personal doctor.³⁶ During cross-examination, Miner admitted that he made physical contact with Employee and used his body to try to guide Employee up the stadium stairs before Employee hit him with his forearm.³⁷ During the redirect examination, Miner clarified that his goal was not to physically assist Employee in going up the stairs and out of the stadium. However, he mentioned that Employee was not complying after he was the third individual to ask Employee to exit the stadium, leading him to believe that touching Employee to guide him outside was a judgment call. He stated that management permits employees to exercise their own judgment in such situations.³⁸

Tanya Butler (“Butler”) Tr. 68-100

Butler served as a traffic car patrol officer for MPD in the second district for two decades. She mentioned that she spent around five years working at Nationals Stadium, where her duties involved staying vigilant for any disorderly behavior from patrons and providing assistance to security if needed. Additionally, she explained that she was responsible for gatekeeping duties at the stadium and would manage all the gates until the third inning began, after which she would patrol the stadium. Butler confirms that on September 27, 2022, she was assigned to the third base gate section after the third inning commenced and roamed that area. She recalls having an interaction with Employee at Nationals Stadium on September 27, 2022, when one of the guest services staff approached the third base gate to inform her about a disruptive patron.³⁹

Butler indicated that once guest services alerted her to the disruptive individual and informed her of the section the person was located in, she made her way across the platform toward that area, noting that she could see stadium staff engaged directly with Employee. Additionally, Butler mentioned that she could hear the crowd chanting, "Get him out." As she approached the situation, Butler testified that she saw Miner intervene by stepping in front of Employee during their conversation, attempting to persuade Employee to return to the platform. When Butler got closer to the altercation, she observed Employee swing at Miner, which prompted Miner to grab Employee, leading both of them to fall onto the bleachers. Butler confirmed that during this event, MPD officer Manley was with her, and upon reaching the scene, she found both Miner and Employee entangled on top of each other, at which point she had to separate them. After the incident, Butler conducted an interview with Employee in the stadium's security room, describing him as irritated, unruly, and seemingly under the influence while refusing to answer questions or comply with instructions. Butler stated that she is capable of recognizing signs of substance influence due to her training with the MPD, and based on Employee's actions, she was able to ascertain that he was likely under the influence of a substance.⁴⁰

³⁶ Tr. 59-60.

³⁷ Tr. 62.

³⁸ Tr. 63-64.

³⁹ Tr. 68-72.

⁴⁰ Tr. 73-87.

Butler explained that as a consequence, MPD arrested Employee for assault, and she confirmed that she had filled out the arrest paperwork. She then mentioned that after Employee was taken into custody, she called for a transport unit to help her take him to First District ("1D") for processing, which she indicated she conducted at 1D. Butler affirmed her participation in Employee's criminal trial, where the result was that he was charged with assaulting Miner.⁴¹ During cross-examination, Butler acknowledged that only security personnel or law enforcement are permitted to physically handle a patron who refuses to leave the stadium. She confirmed that Employee faced no charges related to intoxication due to the incident on September 27, 2022.⁴² In the redirect examination, Butler pointed out Agency binder document on page 253 as the bar notice, stating that a bar notice is issued to individuals who enter a location and either behave disruptively or commit a crime that the establishment may or may not choose to pursue. She further elaborated that the bar notice was from the Washington Nationals property and that it was issued to Employee following the September 27, 2022, incident, prohibiting him from entering that property for five years, and she noted that she prepared the notice while acting as a representative of the Washington Nationals when they were unavailable.⁴³

Bryant Edgerton ("Edgerton") Tr. 101-122

Edgerton served as an Investigator in the Internal Affairs department for Agency. He mentioned that his role as an investigator involved looking into criminal cases concerning Agency members that arise before the department. Edgerton confirmed that he oversaw the investigation related to the incident involving Employee on September 27, 2022, since his department witnessed the video of the incident on the news the following day. He noted that Agency members are required to notify the department immediately, within a maximum of seventy-two hours, regarding any criminal issues such as an arrest or a criminal summons. Edgerton explained that after his department became aware of the incident involving Employee through the news, they reached out to an MPD liaison to investigate further and subsequently opened a criminal case on the matter. He also affirmed that Employee did not inform Agency about his arrest within the specified seventy-two-hour timeframe as outlined in Agency policy.⁴⁴

Edgerton confirmed that he spoke with Employee on March 29, 2023, following the criminal proceedings. During the interview, Edgerton noted that Employee mentioned he was not in the designated section of the stadium for which he had purchased tickets and admitted to not leaving immediately when the ushers requested him to do so. Edgerton reported that Employee acknowledged having a verbal confrontation with a fan at the stadium and based on the video footage of the encounter between Employee and Miner, Employee showed no attempts to deescalate the conflict. Edgerton also stated that after reviewing the body camera footage from the incident during the investigation, he determined that all charges against Employee would be upheld.⁴⁵

⁴¹ Tr. 88-94.

⁴² Tr. 95.

⁴³ Tr. 97-99.

⁴⁴ Tr. 102-106.

⁴⁵ Tr. 112-115.

During cross-examination, Edgerton confirmed that Agency had released a statement to the media regarding the arrest of Employee, indicating that they were informed on September 27, 2022, that an Employee of Agency was arrested and charged with simple assault by the MPD. Edgerton stated that he participated in Employee's trial virtually. He identified Government Exhibit one page 18, which is the report he prepared on April 24, 2023, that included the video interview with Employee, the Gerstein affidavit outlining the criminal charges against Employee, the deposition documents related to the charges, and the administrative interview.⁴⁶ In his redirect examination, Edgerton confirmed that when Agency is alerted by a source other than the involved member about an incident, it is the responsibility of the member to inform Agency of their arrest, whether they are on or off duty.⁴⁷

Employee's Case-in-Chief

Employee Tr. 127-163

Employee began working as a Firefighter/EMT with Agency on September 8, 2002, accumulating over twenty-one years of experience. In Employee Exhibit one, on page eight, Employee recognized the document as Form 003A, an initial written notification from Agency. He stated that he did not receive the initial written notification from Agency regarding the charges against him because it was sent to his former address instead of his updated address, which he claims to have informed Agency about back in May 2019. Employee mentioned that he only received the initial written notification letter from Agency on April 22, 2023. He recounted that on the day of his arrest regarding the incident that took place on September 27, 2022, he chose to attend a game at Nationals Park after dinner to meet up with a coworker. He confirmed that he did not wear his work uniform while at the game and when he arrived at the stadium, he walked down to the concourse to find the closest aisle near home plate to locate his friend.⁴⁸

Employee recounted that while attending a game at Nationals Stadium, he shouted towards one of the Atlanta Braves players, saying, "Your blood alcohol content is higher than your batting average," which attracted the attention of the stadium ushers in his vicinity. Employee noted that the female usher approached him in a casual manner, whereas the male usher came up to him, grabbed his wrist, and raised his voice. At that point, Employee responded by telling the usher to remove his hands or he might face job consequences. Employee mentioned that a third usher, Miner, approached him and indicated that he needed to leave.⁴⁹

While Miner was guiding him towards the exit of the stadium, Employee turned and told him to stop touching him and to quit pressing his body against him. Employee further claimed that he asked Miner to stop making contact five times, which was the reason he felt prevented from exiting the stadium because of Miner's physical interactions with him. He stated that after the sixth request for Miner to cease touching him, he let his emotions take over and swung at Miner, losing his balance in the process, and claimed that Miner scratched the side of his face with his nails.

⁴⁶ Tr. 116-121.

⁴⁷ Tr. 122.

⁴⁸ Tr. 127-136.

⁴⁹ Tr. 137-138.

Employee indicated that his intention was to push Miner away from him by contacting his chest, but instead, he admitted to hitting Miner's hat and confirmed that there were no physical injuries.⁵⁰

Employee further reported that after attempting to push Miner away, Miner applied a sleeper hold wrestling technique, which caused Employee to feel Miner's left-hand fingernails pressing into the skin of his face near his bottom lip. Additionally, Employee recounted that he bit Miner out of fear that Miner would hook his fingers and pull on his lips, noting that Miner was being aggressive at that moment. Employee confirmed that he sustained deep laceration wounds on the side of his face, which took three to four months to heal due to Miner's nails digging into his skin. Employee recognized Government Exhibit one page fifty-two as a photograph showing the injuries he incurred from Miner. He mentioned that three officers from the MPD were present at the scene, one of whom was Officer Butler, and that he walked out of the area without assistance from the MPD, who then detained him in a separate room at the stadium for an hour. Furthermore, Employee stated that the stadium's director of security informed him that he was being arrested for misdemeanor simple assault.⁵¹

Employee mentioned that he learned about the incident through a friend who forwarded him a link to a TMZ article, and he also looked at his local news where he watched the video footage. As an outcome of the event that took place on September 27, 2022, Employee noted that he was convicted and charged in superior court for misdemeanor simple assault, resulting in one year of unsupervised probation.⁵²

During cross-examination, Employee acknowledged that he was not in the appropriate section of the stadium when he had his interaction with the two ushers. He also mentioned that he wasn't at the stadium to see the game; rather, he was there specifically to search for his friend and was unsure if there was a policy regarding attending the stadium solely for that purpose. Employee admitted to having consumed five alcoholic drinks prior to arriving at the game. He confirmed that when Miner approached him and spoke to him in that section, Miner was not aware of the situation between him and the two ushers. Employee stated that he received medical assistance from the ambulance service that the Nationals Park had contracted. He mentioned that he insisted Miner be charged with assault in connection to the incident, even though no charges were filed.⁵³

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). In that case, the D.C. Court of Appeals overturned a decision of the D.C. Superior Court that held, *inter alia*, that this Office had the authority to conduct *de novo* evidentiary hearings in all matters before it. According to the D.C. Court of Appeals:

⁵⁰ Tr. 139-141.

⁵¹ Tr. 142-144.

⁵² Tr. 145.

⁵³ Tr. 148-159.

The OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives the OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings. *See* D.C. Code §§ 1-606.2 (a)(2), 1-606.3 (a), (c); 1-606.4 (1999), recodified as D.C. Code §§ 1-606.02 (a)(2), 1-606.03 (a), (c), 1-606.04 (2001); *see also* 6 DCMR § 625 (1999).

The MPD contends, however, that this seemingly broad power of the OEA to establish its own appellate procedures is limited by the collective bargaining agreement in effect at the time of Pinkard's appeal. The relevant portion of the collective bargaining agreement reads as follows:

[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing has been held, *any further appeal shall be based solely on the record established in the Departmental hearing.* [Emphasis added.]

Pinkard maintains that this provision in the collective bargaining agreement, which appears to bar any further evidentiary hearings, is effectively nullified by the provisions in the CMPA which grant the OEA broad power to determine its own appellate procedures. A collective bargaining agreement, Pinkard asserts, cannot strip the OEA of its statutorily conferred powers. His argument is essentially a restatement of the administrative judge's conclusions with respect to this issue.

It is of course correct that a collective bargaining agreement, standing alone, cannot dictate OEA procedure. But in this instance the collective bargaining agreement does not stand alone. The CMPA itself explicitly provides that systems for review of adverse actions set forth in a collective bargaining agreement must take precedence over standard OEA procedures. D.C. Code § 1-606.2 (b) (1999) (now § 1-606.02 (b) (2001)) states that "any performance rating, grievance, adverse action, or reduction-in-force review, which has been included within a collective bargaining agreement . . . *shall not be subject to the provisions of this subchapter*" (emphasis added). The subchapter to which this language refers, subchapter VI, contains the statutory provisions governing appellate proceedings before the OEA. *See* D.C. Code § 1-606.3 (1999) (now § 1-606.03 (2001)). Since section 1-606.2 (b) specifically provides that a collective bargaining agreement must take precedence over the provisions of subchapter VI, we hold that the procedure outlined in the collective bargaining agreement -- namely, that any appeal to the OEA "shall be based solely on the record established in the [Adverse Action Panel] hearing" -- controls in Pinkard's case. The OEA may not substitute its judgment for that of an agency. Its review of an agency decision -- in this case, the decision of the Adverse Action

Panel in the MPD's favor -- is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, also must generally defer to the agency's credibility determinations. Mindful of these principles, we remand this case to the OEA to review once again the MPD's decision to terminate Pinkard, and we instruct the OEA, as the collective bargaining agreement requires, to limit its review to the record made before the Adverse Action Panel.⁵⁴

Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* Hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met:

1. The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
2. The employee has been subjected to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: “[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing”; and
5. At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.

Based on the documents of record and the position of the parties as stated during the conference held in this matter, I find that all of the aforementioned criteria are met in the instant matter. Therefore, my review is limited to the issues set forth in the Issue section of this Initial Decision *supra*. Further, according to *Pinkard*, I must generally defer to the Fire Trial Board’s (“Trial Board”) credibility determinations when making my decision. *Id.* After multiple continuances, a Trial Board hearing was held on April 20, 2023. On September 27, 2023, the Trial Board issued its Findings and Recommendations for the charge and specification outlined above. Ultimately, Employee was found guilty and the Trial Board recommended that he be removed from service. On September 29, 2023, Agency Chief John Donnelly, Sr., provided written notice to Employee that he was adopting the findings and recommendations.

⁵⁴ *Id.* at 90-92. (citations omitted).

Substantial Evidence

According to *Pinkard*, I must determine whether the Trial Board's findings were supported by substantial evidence. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁵⁵ Further, "[i]f the Trial Board's] findings are supported by substantial evidence, [I] must accept them even if there is substantial evidence in the record to support contrary findings."⁵⁶ As noted above, there was a comprehensive undertaking by the Agency, in assessing the issues in the Statement of Charges. Several witnesses, even to some extent Employee himself, corroborated the facts and circumstances laid out in the Charges and attendant specifications. Employee, in his Reply Brief takes focused umbrage on the criminal statue regarding the prosecution of D.C. Official Code § 22-404.⁵⁷ Agency, notes in its Surreply that Employee's contention lacks merit since he was never charged criminally, only administratively. Agency further notes in its Surreply that Employee did not contest any other facet of the substantial evidence rubric that a full Pinkard analysis calls for.⁵⁸

In making the determination to remove Employee from service, I see no credible indication that the analysis undertaken by the FTB was done in error or that its Findings of Facts and Conclusions of Law did not causally flow from the facts and pertinent law. I find that Employee's admission of misconduct before the Trial Board constituted cause.⁵⁹ I also find that Agency has established that the Trial Board had substantial evidence to support its removal recommendation.

Harmful Procedural Error

Pursuant to *Pinkard* and OEA Rule 631. 3, the Undersigned is required to make a finding of whether or not FEMS committed harmful error. OEA Rule 631. 3, provides as follows: "Notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." Under this rubric, Employee contends that the above referenced Cases were improperly served resulting in a deprivation of his due process rights pursuant to the U.S. Constitution.⁶⁰ Agency explains that due process in this scenario only requires that Employee be provided with notice and an opportunity to be heard as dictated by *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Employee alleges that service of these cases violated the 75-day rule.⁶¹ In response, FEMS denies that Employee's address was incorrect per its records. It asserts that these matters were initially mailed to Employee's address of record as noted in its database. Agency further notes that this is the same address that Employee provided to MPD for its Incident Report dated September 27, 2022.⁶² Agency further notes that

⁵⁵ *Davis-Dodson v. D.C. Department of Employment Services*, 697 A.2d 1214, 1218 (D.C. 1997) (citing *Ferreira v. D.C. Department of Employment Services*, 667 A.2d 310, 312 (D.C. 1995)).

⁵⁶ *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1159 (D.C. 1989).

⁵⁷ See, Employee's Response to Agency's Brief, pp. 1 – 4. (September 16, 2024).

⁵⁸ See, Agency Sur-Reply Brief pp. 1 – 3 (October 24, 2024).

⁵⁹ *Employee v. MPD*, OEA Matter No. 1601-0036-17 (June 11, 2018).

⁶⁰ See, Employee's Response to Agency's Brief, pp. 4 - 7. (September 16, 2024).

⁶¹ CBA, Article 31, Section B(1).

⁶² See, Agency Brief pp. 16 – 19 (

despite the address conundrum, Employee had full notice of the cases that were brought to bear and had ample opportunity to contest Agency's adverse action noting that Employee was represented by counsel during the FTB.

I have examined the record and I do not find Employee's complaints to be valid. Agency followed the proper procedure in its adverse action against Employee by providing due process. Employee was given proper notice and was able to represent himself and cross-examine witnesses in the hearing afforded him. Agency conducted a thorough analysis of the relevant factors in determining his penalty. There was no inconsistency or unreasonableness in Agency's adverse action against Employee. I therefore find that there was no harmful procedural error in this matter. I also find that if there was error, it was harmless in nature.⁶³

Adverse Action Done in Accordance with Applicable Rules and Regulations

Agency asserts that Employee's removal did not violate any applicable rules or regulations. Employee, in his reply brief, did not readily provide a distinct section that addressed this Pinkard rubric. Employee did reference a previous adverse action wherein he was demoted. Employee contrasted his Simple Assault in the instant matters with the adverse action that led to his demotion from Firefighter/Technician to Firefighter/Emergency Medical Technician that was addressed and upheld by the Undersigned in OEA Matter No. 1601-0082-22. Employees' previous matter with the Undersigned did not reference any cause of action that could be interpreted as criminal in nature.

I find that Employee did not credibly allege that Agency's action was not done in accordance with applicable laws or regulations. My examination of the record reveals that Agency's action was proper. Given the gravity of the conduct and the proper procedural safeguards of due process that Agency undertook, I find that Agency proved by a preponderance of the evidence that it had cause to demote Employee.

Conclusion

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment.⁶⁴ I conclude that given the totality of the circumstances as enunciated in the instant decision, that Agency's actions (for both matters) of removing Employee from service should be upheld.⁶⁵

⁶³ In his Reply Brief, Employee asserts that Agency's report (no attribution was therein provided for context) was inaccurate. He further alleged that the "only way it was known that Employee was a firefighter is when Mark Segraves of NBC4 Washington chose to do additional reporting..." Employee's Reply Brief p. 6. I find that I have no context in which to make a determination that this is a credible argument towards any relevant issue.

⁶⁴ See *Stokes, supra*; *Hutchinson, supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (September 21, 1995).

⁶⁵ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014)

ORDER

Based on the foregoing, it is ORDERED that the Agency's actions of removing Employee from service is hereby UPHELD.

FOR THE OFFICE:

/s/ *Eric T. Robinson*

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

(citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).